IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 238 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMMADBHAI ALIJI MUMAN

Versus

CHAUDHARY HEMRAJBHAI KANJIBHAI

Appearance:

1. First Appeal No. 238 of 1997

MR SUNIL B PARIKH for Petitioner No. 1-2

MR MOHANBHAI DESAI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 07 & 08th August 2002

ORAL JUDGEMENT

The present First Appeal is filed by Mohammadbhai Aliji Muman and National Insurance Company Ltd. being aggrieved of the judgement and award passed by the Motor Accident Claim Tribunal (Main), Banaskantha District at

Palanpur (hereinafter referred to as "the Tribunal") in Motor Accident Claim Petition No.446 of 1988 dated 22.10.1996.

2. The main contention of the present appellants is that the vehicle owned and driven by appellant no.1 was not involved in the accident. Therefore, the Tribunal ought not to have awarded any amount against the present appellants.

3. The facts of the case are that the Motor Accident Claim Petition No.446 of 1988 came to be filed before the Tribunal on 29th July 1988 alleging that the respondent-claimant Chaudhary Hemrajbhai Kanjibhai met with an accident on 30.1.1988 at 12.00 Noon at Palanpur-Sidhpur Highway, near 'Patia' (sign board) of Village Taniwada. The place of accident was about 1/2 KM away from the said Patia. It was mentioned in the said claim petition that on the day of the accident the applicant was going from Palanpur to Mehsana. His friend, named Sureshbhai Mali was sitting as a pillion rider on the scooter. When they reached the place of accident, the Jeep involved in the accident came from the opposite direction, driven in rash and negligent manner in full speed and dashed with the side of the scooter, on account of which the scooter became uncontrolled and slipped. A fracture was caused to the applicant on the left leg.

4. On perusal of the original papers, it is noticed that at the time of filing of the claim petition, it had only one 'opponent', i.e. 'Kantilal Mohanlal Thakore', resident of Village Kheralu, District Mehsana. So far as column no.7 is concerned, wherein information of 'the name of driver of the vehicle involved in the accident' is to be provided, it was mentioned, "as that of opponent no.1." In column number 8 'the name of the owner of the vehicle involved in the accident and his address' is to be mentioned, it was mentioned, 'as of opponent no.2'. It is interesting that though claim petition contained name of only one opponent, in clause no.8 it was mentioned as aforesaid. Column no.9 was, to provide for, 'the name of the Insurance Company of the vehicle involved in the accident and its address', in that column it was mentioned, 'as of opponent no.3'. It is surprising that the claim petition, which is filed by the claimant himself under his own signature, did not notice that claim petition contained the name of only one opponent, in the cause title, while in columns no.8 and 9, it was mentioned that, 'the details are as that of opponents no.2 and 3 respectively'. It is also important

to note that in column no.12 wherein grounds for demanding compensation are to be mentioned, it is stated that opponents no.1 and 2 were driver and owner and opponent no.3 is the Insurance Company. The accident took place on account of full speed and rash/ negligent driving, which had resulted into accident. All the opponents are liable to pay the amount of compensation. This also shows that the claim petition was filed without taking any care to verify as to how many opponents are in fact impleaded. The claim petition was admitted on 29.7.1988 and notice was issued.

5. This claim petition came to be amended in the year 1994 by filing an application, exh.6. By this application, it was prayed that the party who is joined as opponent no.1 in the claim petition be permitted to be deleted and that in the cause title of the claim petition as well as in column nos.7 & 8 of the petition, the parties mentioned therein be permitted to be joined as opponents. It is for the first time that by this application the present appellant no.1-Mohammadbhai Aliji Muman, resident of Block No.22, Diamond Society, Sidhpur Taluka, District Mehsana was joined as opponent no.1. The National Insurance Company was joined as opponent no.2, same details were to be mentioned in column no.(9) of the claim petition. This application was granted by an order dated 20.9.1994. The order is by way of rubber stamp, which reads as under:

> "Heard. Opponent no.1 be deleted. Opponents no.1 & 2 as mentioned in this application be added. Applicant to carry out amendment in the application. Issue notice on the newly added opponents no.1 & 2 on payment of process fees."

Though this order on exh.6 application was passed on 20.9.1994, summons were issued on 20.12.1995 only, copies of which are at exhibits 7 & 8. It is alleged that exh.7, the summons issued to opponent no.1 contains his signature and also the signature of a witness, named Mumtaj M. The report of the bailiff dated 5.1.1996 is, "At the address mentioned in the notice, on inquiry about opponent no.1, at 4.20 PM he was found in person. He was served with the notice and copies annexed thereto. The same was served by obtaining his signature and signature of witnesses and the same is reported."

6. Opponent no.1 is examined at exh.78. He has deposed that on 30.1.1988 he had gone to village 'Chadotar' in the morning, he was returning to Sidhpur at noon. When he reached near 'Patel Hotel', near "Chhapi"

he saw a crowd on the road. There he found a person had fallen down from a scooter and was injured. The persons in the crowd told him that, the person be taken to hospital in his vehicle. Therefore, I had taken that person to hospital. There was another person withe the person injured, who was driving the scooter. He informed the deponent that the person injured was sitting as a pillion rider on the scooter and has got injured due to fall from the scooter. The deponent took that person to C.B. Shah Hospital at Sidhpur and after dropping him there, the deponent went away. The deponent has further deposed that after about six months the person who had sustained injuries had met him. He had come with some relative of the deponent and with the person who was with him on the day of the accident. He informed him that he has sustained injuries and to get the claim from the Insurance Company, he had given the number (of the vehicle) of the deponent. He further told the deponent that he has come to inform the deponent and to request that the deponent should not take any objection. He also told the deponent that whatever expenses will be required to be incurred by the deponent will be borne by him. The deponent has also stated that the Police had never inquired for him, nor interrogated him, that he had come to depose as the Insurance Company had written a letter to him.

6.1 The witness was cross-examined by the learned advocate for the applicant-claimant. The deponent was shown exh.7 -- summons and he was shown the signature which was alleged to have been that of the deponent; the deponent replied in the negative. He also asserted that it is not correct that he has signed summons and that he is telling lie in the court. He deposed that on receipt of the notice from the advocate he came to know about this claim application. He has denied that he has received any notice dated 22.1.1996 from the advocate of the applicant-- claimant asking him to produce the insurance papers of the vehicle. He has denied that he has received notice, exh.80 and that exh.81 Registered Post A.D. slip contains his signature. He deposed that he has not filed any reply to this Compensation Application. He has denied that on the day of the accident he was going from Sidhpur to Palanpur in Jeep bearing No.GVD 9703 and that the claimant was going from Palanpur to Sidhpur. He has denied the suggestion of driving the Jeep in the middle of the road at high speed of 70 to 80 KMs, also of rash and negligent driving. He deposed that he had taken the claimant to the hospital at Sidhpur clarifying that he had taken the claimant at the request of the persons. He has also deposed that he does

not know as to whether the person sitting at the rear seat of the scooter had filed any complaint in the court on 24.5.1988. He also denied that he was served with notice, exh.22 under the Motor Vehicles Act by the Police and that it bears my signature. The deponent was also cross-examined on the point of the claimant meeting the deponent after six months, but no material contradiction could be brought about.

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7. From the record of the case, the circumstances which emerged are as under:

7.1 The accident had taken place on 30.1.1988. The complaint was filed on 24.5.1988. The claim petition was filed on 29.7.1988. The same came to be amended in the year 1994 and summons were issued to the present appellant-Insurance Company only in the year 1996. Thereafter, the petition came to be allowed by a judgement and order dated 22.10.1996. Summons issued to opponent no.1 vide exh.7 are alleged to have been served on 5.1.1996. Summons issued to opponent no.2 vide exh.8 were served on 5.1.1996. There is deposition of the doctor at exh.63 which is very important for the purpose of appreciating the controversy involved in the matter, namely, "whether vehicle in question was involved in the accident or not". The doctor has stated that he had examined the patient Hemrajbhai Chaudhary on 30.1.1988. This patient had fracture of tibia fibula in left leg as he was injured by scooter. He then deposed that the said injury was sustained on account of, 'a fall from the scooter'. The doctor has deposed that the patient had come to him directly after the accident. He deposed that if there is a head-on collision between a jeep and a scooter if a man falls from the scooter, injury sustained by the patient is possible. He has also deposed that we do not write all the details of the vehicular accident in the case history. The cross examination of this doctor is more important and material. He has stated that the history as was given by the patient was written in the certificate, exh.64. This patient had never given the history of collision of a jeep and a scooter. On the contrary the patient had given the history of, 'the fall from the scooter' and he reiterated that if a man falls from the scooter, he can sustain injuries which are sustained by the patient.

8. Exhibit 64 is the certificate issued by the doctor wherein it is stated that,

"This is to certify that I have examined and treated Mr.Hemrajbhai Kanjibhai Chaudhary, male 35 of Jidasan Tk. Vadegam (B.K.) on 30.1.88. He was brought by his relative giving H/o fall from scooter. Patient conscious. Pulse, B.P. normal. .. .."

In this background the fact that when the patient was brought to hospital, he was conscious, not only that his B.P. and pulse were normal, assumes more significance. Besides, the relative who accompanied the claimant to the hospital was none other than the pillion rider himself. In such circumstances, if at all there was an accident, there was no reason for the pillion rider-- the relative of the appellant to give the history of a fall from the scooter. Hence it is not possible to believe that though there was an accident the pillion rider, his relative gave history of a fall from the scooter.

8.1 What is more important is that though the accident had taken place on 30.1.1988, the criminal complaint was filed on 24.5.1988 only. This is tried to be explained by saying that the patient was under impression that the jeep owner/ driver must have filed a complaint of the accident. The explanation does not inspire any confidence and hence cannot be accepted. It is further required to be noted that in the criminal complaint, the name of opponent no.1 was given. But still in the claim petition which was filed on 29.7.1988, i.e. two months later, one, Kantilal Mohanlal, resident of Kheralu, District Mehsana is shown as opponent. In clauses (7), (8) and (9) of the claim petition, it is mentioned that the details of these columns are as per the cause title, but in cause title there are no details of opponents no.2 and 3.

9. This claim petition came to be amended in 1994. That amendment application, exhibit 6 does not contain a word as to why the name of opponent no.1 was given as Kantilal Mohanlal Thakore, resident of Kheralu, District Mehsana in place of the present opponent. The application for amendment does not contain any reason for amending the petition in the year 1994. The application for amendment states that, 'in the cause title of the claim petition, the party who is joined as opponent no.1, be deleted and in the cause title as opponent no.1 and in paras 7 & 8 of the claim petition, the following parties may be permitted to be joined as parties'. In that application for the first time, the name of the present opponent no.1 and of the Insurance Company came on record in the year 1994.

10. In view of the aforesaid discussion, the judgement and award of the Tribunal cannot be upheld. It is now unknown that a person who comes forward for helping the person injured on the road is often made victim by false implication. In the present case also the case of opponent no.1 is that he reached the scene of occurrence with his jeep and the persons in the crowd requested that the injured may be taken to the hospital. Therefore, the injured was taken to the hospital. Thereafter, by amending the claim petition in the year 1994, that too without giving a word of explanation about such belated amendment, falsely implicating opponents no.1 and 2, the claim petition is preferred.

11. Mr.Desai, the learned advocate appearing for opponent no.1 herein-- the original claimant submitted that the claim petition was prepared on the basis of the instructions of the claimant. The claim petition is bound to be prepared as per the instructions of the society, but then it does not advance the cause of the claimant any further. The appellant was fully conscious that his B.P. and pulse were normal. He was accompanied by the pillion rider, who was his relative and still not giving the history of the accident before the doctor, not giving proper details of the opponents at the time of filing the claim petition in the month of July 1988 though before that a criminal complaint was already filed in the month of May 1988, wherein the name of opponent no.1 was given, stands explained. In view of the aforesaid discussion, the present judgement and award are required to be quashed and set aside.

12. In the result the First Appeal is allowed with no order as to costs. The judgement and award are hereby quashed and set aside. The amount awarded is already deposited by the Insurance Company. The Tribunal is directed to refund the amount to the Insurance Company.

(Ravi R. Tripathi, J.)

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